United Nations A/HRC/WG.6/31/MUS/3

General Assembly

Distr.: General
27 August 2018

Original: English

Human Rights Council
Working Group on the Universal Periodic Review
Thirty-first session
5-16 November 2018

Summary of Stakeholders' submissions on Mauritius*

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a summary of 6 stakeholders' submissions[1] to the universal periodic review, presented in a summarized manner owing to word-limit constraints.

II. Information provided by stakeholders

A. Scope of international obligations[2] and cooperation with international human rights mechanisms and bodies[3]

2. Center for Global Nonkilling (CGNK) recommended the ratification of the Convention on the Prevention and Punishment of the Crime of Genocide, the second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty, and the Convention on the Protection of all Persons from Enforced Disappearances.[4]

3. CGNK recommended that, although Mauritius had no army, it should swiftly present its initial report regarding the Second Protocol to the Convention on the Rights of the Child on children in armed conflict, which is applicable to army and police alike.[5]

4. CGNK noted with appreciation Mauritius support for the declaration on the human rights to peace and recommended the ratification of: the third Optional Protocol to the Geneva Conventions; the Protocols of the 1954 Hague Convention on cultural property in the event of armed conflict; and the most recent protocols of the Convention on Conventional Weapons.[6] International Campaign to Abolish Nuclear Weapons (ICAN) noted with appreciation that Mauritius had participated in the negotiation of the United Nations Treaty on the Prohibition of Nuclear weapons, and had voted in favour of its adoption on 7 July 2017. However, Mauritius had not yet signed this treaty. ICAN

* The present document was not edited before being sent to United Nations translation services.

recommended that Mauritius sign and ratify the U.N. Treaty on the Prohibition of Nuclear Weapons as a matter of international urgency.[7]

B. National human rights framework[8]

5. ECPAT International, Halley Movement and Pan-Mauritius Coalition (JS1) stated that the tasks of the Ombudsperson included launching an investigation as he/she sees fit, and the investigation of any complaints lodged by a child. However, the provisions did not give the Ombudsperson power to bring a court case on behalf of the child. JS1 also referred to the criticisms regarding the limited effectiveness of child-friendly complaints and reporting mechanisms.[9]

C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Cross-cutting issues

Equality and non-discrimination[10]

6. Collectif Arc en Ciel (CAEC) stated that homophobic attitudes persisted in Mauritius and that homosexuality tended to be framed within a discourse of sin and unnatural behaviour. Many lesbian, gay, bisexual and transgender (LGBT) persons experienced stigmatisation within their own family.[11] CAEC explained that the Civil Status Office did not recognise transgender persons who would like their identity documents (national identity card, passport) to reflect their self-identified gender.[12] YQA drew attention that gender identity was not covered under the Equal Opportunities Act 2008.[13] Young Queer Alliance (YQA) recommended that Mauritius conduct awareness-raising campaigns for the general public on the rights of LGBT persons.[14]

7. YQA asserted that the definition of "racial hatred" adopted by article 282 of the Criminal Code Act 1838 of Mauritius was clearly restrictive, as there was no mention of 'sexual orientation' or 'sexual identity' as a social group. Hence, hate motive on the basis of criminal acts against an individual based on their sexual orientation and gender identity could not be considered as an aggravating factor for criminal sentences under this Act.[15] It recommended that Mauritius amend article 282 of the Criminal Code Act 1838 by inserting direct indication of the hate motive against people based on their real or perceived sexual orientation, gender identity and gender expression as aggravating circumstances.[16]

8. YQA considered that, as long as sodomy was conducted between consenting adults, it was a matter of freedom and privacy of these individuals and the State should not interfere in the right to engage in such sexual activity related to bodily integrity.[17] CAEC recommended that Mauritius repeal article section 250 of the Criminal Code criminalising sodomy, as it reinforced the stigmatisation of homosexual and bisexual men and transgender people, as well as of lesbian and bisexual women.[18]

9. CAEC expressed that progress in adopting legislative measures leading to decriminalisation of same-sex relations appeared to have stalled. CAEC stated that to date, no national consultations on the subject had been conducted and that the recommendations of the Human Rights Committee on repealing the article that criminalises "sodomy" and on training police officers, judges and prosecutors on the rights of LGBT persons had not yet been included in the National Human Rights Action Plan 2012-2020 under the aegis of the Human Rights Secretariat/ National Mechanism for Reporting and Follow-up.[19] It recommended that the observations of the Human Rights Committee be implemented and that progress thereon be monitored under inter alia the National Human Rights Secretariat/ National Mechanism for Reporting and Follow-up.[20]

10. CAEC considered that current legislation reinforced the vulnerability of LGBT persons as it neither provided for protection against violence on the basis of sexual orientation or gender identity nor allowed rape victims to be considered as such.[21]

11. CAEC stated that despite the fact that the Employment Rights Act (2008) and the Equal Opportunities Act (2008) explicitly forbid discrimination based on sexual orientation, the fact remained that there was no recognition of non-heterosexual couples in society.[22] YQA noted that people who did not have the rights to enter into marriage and/or civil partnership were in a disadvantageous position as they did not enjoy the same benefits and rights.[23] CAEC recommended that Mauritius amend discriminatory definitions in the Mauritian legislation to include same-sex couples on the same basis as spouses of opposite sexes and that the state allow for legal recognition of self-identified gender under national law without the need for surgery and related medical procedures.[24]

12. CAEC recommended that Mauritius conduct wider consultations to update/ renew the existing 2008 National Gender Policy Framework and include civil society in consultations related to gender, gender-based violence, family welfare and child development.[25]

2. Civil and political rights

Right to life, liberty and security of person[26]

13. CGNK asserted that Mauritius had legally abolished death penalty in 1995 and yet, death penalty was still present in the Constitution. Furthermore, it underscored that the Mauritius' Constitution largely permitted the taking of life in cases of arrest, escape, riot, insurrection, mutiny and to prevent criminal offences (article 4). CGNK asserted that the use of force in these cases should be the subject of a strict independent control, instead of being permitted to be used under an exception to the right to life. CGNK urged Mauritius authorities to change the Constitution and enhance life and its values therein.[27]

14. CAEC underscored that the Advisory Committee on Reinforcement of Framework for Protection from Domestic Violence had recommended a review of relevant legislation and more specifically, the adoption of a more comprehensive definition of "domestic violence" therein so as to include all acts of physical, sexual, psychological or economic violence that occur within the family or between former or current spouses or partners, whether or not the perpetrator shared or had shared the same residence with the victim. CAEC stated that so far, there had been no indication that those recommendations had been taken on board or of the timing of further consultations on the matter.[28] CGNK encouraged the Government to act on the adoption and publication of comprehensive violence prevention plans.[29]

15. CAEC indicated that non-heterosexuals experienced harassment by neighbours, forced marriages following kidnapping and sequestrations by the family, physical violence and blackmail.[30] YQA asserted that violence due to homophobia and transphobia was a lived reality for many lesbian, gay, bisexual, transsexual, queer, intersex, and asexual persons living in Mauritius.[31] It stated that no legal sanctions had been taken against anti-LGBT supporters who had acted violently against persons present at the Gay Pride march, despite the presence of the Police Force.[32]

Administration of justice, including impunity, and the rule of law[33]

16. JS1 underscored there were various legal mechanisms for children to access justice in Mauritius if they believed their rights had been violated. JS1 also noted that there were several legal mechanisms that provided child-friendly and child-sensitive justice in Mauritius. It underscored that despite the fact that Mauritius had a Juvenile Court, the Court mainly dealt with situations where the child was the offender and not the victim. In terms of legal advice and aid, the Legal Aid and Legal Assistance Act did not stipulate legal aid to child victims but just to children charged with a crime or misdemeanour. JS1 added that as such, pro bono services were not well developed yet, and needed to be encouraged.[34]

17. JS1 recommended, inter alia, that Mauritius: establish a legal mechanism for children to access justice; ensure that law enforcement agencies have the resources and skills to identify, investigate and respond to sexual exploitation of children and are able to use victim-centred and child friendly methods when dealing with child victims and witnesses; create additional legal provisions to ensure that child victims of sexual

exploitation have access to legal remedies, regardless of their gender or their background; and ensure that, regarding sexual exploitation of children, victims are not treated as criminals, and that the burden of proof falls on the authorities and not on the victim.[35]

18. CAEC recommended, inter alia, that Mauritius: ensure that all programmes working on policing, the criminal justice system and/or civil society actively address LGBT hate crime; provide training on sensitivity and effective response to LGBT discrimination and hate crime for police, security services and the criminal justice system; and build the capacity of law enforcement officers to document instances of hate crime against them.[36] YQA recommended that the state develop and implement policies and programmes for police officers, judges and prosecutors on the rights of LGBT persons.[37]

Fundamental freedoms and the right to participate in public and political life[38]

19. YQA indicated that human rights defenders and organisations were targets of hate crimes as a result of their work in defending the rights of LGBT people, giving as an example the death threats that the former president of YQA had received in 2014.[39]

20. Recalling the right to take part in the conduct of public affairs, directly or through freely chosen representatives, CGNK encouraged the Parliament of Mauritius to consider the implementation of new democratic means in order to enhance the participation and responsibilities of the people of Mauritius.[40]

3. Economic, social and cultural rights

Right to an adequate standard of living[41]

21. JS1 stated that out of all local communities, the Creole community was the most affected by poverty.[42]

Right to health[43]

22. CGNK noted that the rate for mortality under the age of 5 was 12.2 / 1,000 (2017), which showed Mauritius was doing well.[44]

23. CGNK recommended to pursue its efforts at suicide prevention and to give reinforced attention to the prevention of suicides by males.[45]

24. CAEC expressed that laws that criminalised same-sex relations led to the virtual exclusion of LGBT people from many national HIV/AIDS policies.[46] CGNK stated sexual education and contraceptive means should be readily available.[47]

25. CAEC asserted that, in spite of the protection afforded laws, members of the LGBT community had reported high levels of stigma and other problems at public health care facilities and transgender persons faced particular forms of stigma and discrimination that undermined their access to health care, among others.[48] It underscored that health facilities and service providers failed to understand and had outdated approaches to gender identity and expression. Health care services failed to provide appropriate sexual and reproductive health services.[49]

26. CGNK noted complications arising from illegal abortions and recommended that the government take more actions regarding abortion prevention and safe abortions.[50]

4. Rights of specific persons or groups

Children[51]

27. JS1 recalled that in the country's last UPR report in 2013, various countries recommended the government to finalise and submit the Children's Bill, recommendation that was accepted.[52] However, since then the Children's Bill still has not been adopted, It recommended that Mauritius urgently adopt the consolidated children's Bill.[53]

28. Global Initiative to End All Corporal Punishment of Children (GIEACPC) stated that corporal punishment in Mauritius was lawful in the home, in alternative care settings, in schools, and in penal institutions.[54] GIEACPC asserted that the Child Protection Act

1994 made it an offence to "ill-treat a child or otherwise expose a child to harm" but did not prohibit all corporal punishment and that other legal provisions against violence and abuse, including the Criminal Code, were not interpreted as prohibiting all corporal punishment.[55]

29. GIEACPC stated that since the second UPR review, there had been no change in the legality of corporal punishment of children.[56] GIEACPC expressed hope that the Working Group on the UPR will note with concern the legality of corporal punishment of children in Mauritius and that states will raise the issue during the review in 2018 and make a specific recommendation that Mauritius fulfil its commitment and enact the Children's Bill as a matter of urgency to clearly prohibit all corporal punishment of children in all settings, including in the home.[57]

30. JS1 asserted that from 2012 to 2013, more than 818 complaints of abuse committed against children were recorded by Helpline Mauritius. JS1 stated that according to the Child Development Unit, 1175 children suffered sexual violence in the last 5 years.[58] JS1 highlighted the fact that in the last country's UPR in 2013, no recommendations targeted specifically the exploitation of children in prostitution, online child sexual exploitation, child sexual abuse materials, sexual exploitation of children in the context of travel and tourism, and child early and forced marriage.[59]

31. JS1 asserted that existing risk factors leading to the sexual exploitation of children were poverty, the high number of children living on the streets, low birth registration, a high rate of substance use and abuse, family breakdowns, and a lack of information regarding sexual exploitation of children, societal norms, perceptions and stigma.[60]

32. JS1 indicated that the Mauritian legal frameworks relating to the sale and trafficking of children for sexual purposes were comprehensive and in compliance with the international minimum standards and that the main law that dealt with the issue was the Combating of Trafficking in Persons Act.[61] Nevertheless, JS1 underscored the lack of clarity and uniformity in Mauritius' legislation in relation to all forms of sexual exploitation of children. It asserted that the main laws penalising related offences were the Child Protection Act and the Criminal Code, which did not meet the international minimum standards.[62]

33. JS1 stated that the Child Protection Act contained norms, which could partially entail some manifestation of online child sexual exploitation, but that the Act did not provide a definition for child sexual abuse materials.[63] It added that despite reported significant numbers of children sexually exploited in the context of travel and tourism, there was no explicit legal provision that addressed such offences.[64] It recommended that Mauritius provide a legal definition and criminalise both sexual exploitation of children in the context of travel and tourism and online child sexual exploitation, and provide a definition of child sexual abuse materials.[65]

34. Recalling the lack of a main pivotal body in the government to coordinate specifically policies and measures against the sexual exploitation of children, JS1 recommended that the government create a body which specifically focuses on sexual exploitation of children and all its manifestations and strengthen coordination and cooperation between the various government departments and agencies working in the areas covered by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.[66]

35. JS1 underscored the lack of plan of actions addressing sexual exploitation of children. JS1 noted the launch of the National Child Protection Strategy and its Action Plan and the National Human Rights Action Plan. It stated that although the government drafted the National Plan to Combat Human Trafficking in 2016, there was no indication that the plan had been approved yet.[67] JS1 recommended, inter alia, that Mauritius establish a new National Plan of Action (NPA) to combat the sexual exploitation of children, ensure and allocate sufficient budget for the dissemination, implementation, monitoring and evaluation of all National Plans of Action and establish a data-gathering system to evaluate the extent and severity of sexual exploitation of children in Mauritius.[68]

36. JS1 also recommended, inter alia, that the government: continue raising public awareness about sexual exploitation of children, specifically among vulnerable groups, and

about the sanctions applicable to this crime to all citizens and visitors; promote the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism; invest in child empowering prevention programmes on sexual exploitation of children, included in the standard school curricula and address its root causes; and promote child protective social norms through community development projects and the media, including social networks.[69]

37. JS1 indicated that the Child Development Unit of the Police Force put in important efforts to provide adequate protection for child victims. It asserted that, however, police officers stated that one of the major challenges faced was how to effectively identify child victims of sexual exploitation. JS1 underscored the lack of commitment of the Government to prosecute and convict offenders of child trafficking.[70] It also pointed out that there was a considerable lack of resources to adequately provide access to recovery and reintegration for child victims. It described a lack of sufficient training and specialised staff members, which resulted in limited and insufficient rehabilitation and reintegration procedures for child victims.[71]

38. JS1 recommended, inter alia, that Mauritius: ensure that child-friendly services are available and regulated by quality standards, with adequate resources and easily accessible to all children, in order to guarantee their physical and psychological recovery and reintegration into their communities; inform and educate child victims of sexual exploitation about available recovery and reintegration structures; and mobilise sufficient financial and human resources to maintain the shelters for child victims.[72]

39. JS1 indicated that according to the Child Protection Act, a child was any unmarried person under the age of 18 and the age of marriage was 18 for both boys and girls. However, a child above the age of 16 could get married with parental, guardians' or the court's consent.[73] It recommended that Mauritius amend the Child Protection Act, and raise the age of marriage to 18 years of age for both girls and boys without exceptions.[74]

Notes

[1] The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org.

Civil society

Individual submissions:

CAEC	Collectif Arc en Ciel, Quatre Bornes (Mauritius);
CGNK	Center for Global Nonkilling, Geneva (Switzerland);
GIEACPC	Global Initiative to End All Corporal Punishment of Children, London (United Kingdom);
ICAN	International Campaign to Abolish Nuclear Weapons, Geneva Switzerland;
YQA	Young Queer Alliance, Melrose (Mauritius).

Joint submissions:

JS1	**Joint submission 1 submitted by:** ECPAT International and Halley Movement and Pan-Mauritius Coalition.

[2] The following abbreviations are used in UPR documents:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination;
ICESCR	International Covenant on Economic, Social and Cultural Rights;
OP-ICESCR	Optional Protocol to ICESCR;
ICCPR	International Covenant on Civil and Political Rights;
ICCPR-OP 1	Optional Protocol to ICCPR;
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women;
OP-CEDAW	Optional Protocol to CEDAW;
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
OP-CAT	Optional Protocol to CAT;

CRC	Convention on the Rights of the Child;
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict;
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
OP-CRC-IC	Optional Protocol to CRC on a communications procedure;
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
CRPD	Convention on the Rights of Persons with Disabilities;
OP-CRPD	Optional Protocol to CRPD;
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance.

[3] For the relevant recommendations, see A/HRC/25/8, paras. 128.1-28.15, 128.50-128.54, 129.1-129.13, 129.16 and 129.20-129.23.
[4] CGNK, pp. 4 and 5.
[5] CGNK, p. 5.
[6] CGNK, p. 5.
[7] ICAN, p. 1. See also: CGNK, p. 5.
[8] For the relevant recommendations, see A/HRC/25/8, paras. 128.16-128.21, 128.23-128.29, 128.42-128.44, 128.49, 128.65, 128.66, 129.17-129.19, 129.24, 129.30 and 129.34.
[9] JS1, p. 9.
[10] For the relevant recommendations, see A/HRC/25/8, paras. 128.46, 128.65, 128.66, 129.31-129.33 and 129.55.
[11] CAEC, p. 2.
[12] CAEC, p. 4.
[13] YQA, p. 3.
[14] YQA, p. 10.
[15] YQA, p. 5.
[16] YQA, p. 10.
[17] YQA, p. 9.
[18] CAEC, p. 2. See also: YQA, p. 10.
[19] CAEC, p. 3.
[20] CAEC, p. 3.
[21] CAEC, p. 4.
[22] CAEC, p. 2. See also: YQA, p. 3.
[23] YQA, p. 7.
[24] CAEC, p. 5.
[25] CAEC, p. 5.
[26] For relevant recommendations see A/HRC/25/8, paras. 128.39-128.41, 128.85 and 128.86.
[27] CGNK, p. 4.
[28] CAEC, p. 5.
[29] CGNK, p. 5.
[30] CAEC, pp. 5 and 6.
[31] YQA, p. 5.
[32] YQA, p. 5.
[33] For relevant recommendations see A/HRC/25/8, paras. 128.16, 128.30, 128.39, 128.41, and 129.15.
[34] JS1, p. 9.
[35] JS1, p. 11.
[36] CAEC, p. 6.
[37] YQA, p. 10.
[38] For relevant recommendations see A/HRC/25/8, paras. 128.48, 128.61, 128.62, 128.88, 129.26-129.28, and 129.34.
[39] YQA, p. 5.
[40] CGNK, p. 5.
[41] For relevant recommendations see A/HRC/25/8, paras. 128.89-128.94, 128.112, 129.17 and 129.18.
[42] JS1, p. 3.
[43] For relevant recommendations see A/HRC/25/8, paras. 128.45, 128.67, 128.68, 128.95-128.98.
[44] CGNK, p. 6.
[45] CGNK, p. 6.
[46] CAEC, p. 3.
[47] CGNK, p. 6.
[48] CAEC, p. 6.

[49] CAEC, p. 7.
[50] CGNK, p. 6.
[51] For relevant recommendations see A/HRC/25/8, paras. 128.18-128.23, 128.29, 128.47, 128.63, 128.64, 128.78-128.80, and 129.35.
[52] See A/HRC/25/8, paras. 128.18-128.23.
[53] JS1, pp. 5 and 7.
[54] GIEACPC, p. 3.
[55] GIEACPC, p. 2.
[56] GIEACPC, p. 1.
[57] GIEACPC, p. 1.
[58] JS1, p. 3.
[59] JS1, p. 3.
[60] JS1, p. 3.
[61] JS1, p. 6.
[62] JS1, p. 5.
[63] JS1, p. 6.
[64] JS1, p. 6.
[65] JS1, p. 7.
[66] JS1, p. 5.
[67] JS1, p. 4.
[68] JS1, p. 5.
[69] JS1, p. 9.
[70] JS1, p. 4.
[71] JS1, p. 10.
[72] JS1, pp. 10 and 11.
[73] JS1, p. 4.
[74] JS1, p. 7.